



CABLE & WIRELESS, INC.

Cable & Wireless, Inc
8219 Leesburg Pike
Vienna
Virginia 22182

Telephone: (703) 790-5300

March 13, 1996

Mr. William Caton
Secretary
1919 M Street, N.W.
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**


Re: CC Docket No. 96-21

Dear Mr. Caton:

Enclosed please find an original and nine copies of the Comments of Cable & Wireless, Inc. in the above-referenced proceeding. Also enclosed is a diskette containing this document in WordPerfect 5.1.

Please feel free to call me at 703-734-4439 should you have any questions.

Sincerely,



Rachel J. Rothstein

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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In the Matter of)	
)	
Bell Operating Company)	CC Docket No. 96-21
Provision of Out-of-Region)	
Interstate, Interexchange Services)	

COMMENTS OF
CABLE & WIRELESS, INC.

Rachel J. Rothstein
Senior Regulatory Counsel
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182
703-734-4439

March 13, 1996

EXECUTIVE SUMMARY

In this proceeding, the Commission seeks comment on the appropriate form of regulation for BOC entry into the out-of-region interexchange market. The Notice proposes non-dominant regulation if the BOC provides service through an affiliate that satisfies the separation requirements in the Competitive Carrier Proceeding. If the BOC chooses not to form a separate affiliate, than its provision of service would be regulated as dominant.

CWI agrees that it is appropriate to apply non-dominant regulation to a separate BOC affiliate, but only if the affiliate is truly separate. Total separation is necessary to prevent the BOCs from utilizing their local exchange market power to gain an unfair advantage in out-of-region services. Such an advantage could adversely affect local exchange ratepayers, as well as the BOCs competitors. The proposal espoused by the Commission in its NPRM cannot meet this requirement.

In these comments, CWI suggests what it believes to be the minimum elements necessary to ensure that any BOC affiliate is a separate entity. Specifically, CWI believes that: 1) the affiliate should not share employees, officers or directors, and may not rely on BOC marketing or sales personnel to sell out-of-region services; 2) all services obtained from the BOC on a non-discriminatory basis including the use of customer or other competitively valuable information gained through the provision of local exchange service; and 3) there should be no sharing between the BOC and its affiliate of any equipment or facilities.

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Before the
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Bell Operating Company) CC Docket No. 96-21
Provision of Out-of-Region)
Interstate, Interexchange Services)

COMMENTS OF CABLE & WIRELESS, INC.

Cable & Wireless, Inc. ("CWI") hereby files its comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-referenced docket.¹ CWI welcomes BOC entry into the out-of-region interLATA telecommunications services market, as contemplated by the Telecommunications Act of 1996. However, the Commission must enact appropriate safeguards to ensure that the BOCs enter the interexchange market in a competitively neutral fashion. Should the Commission fail to ensure this simple principle, CWI believes serious harm could result both to consumers and BOC competitors. To prevent such abuse, CWI believes that the Commission should require the BOCs to create a truly separate subsidiary for their provision of interexchange service. If the BOC meets these requirements, then non-dominant regulation, as suggested in the NPRM, is appropriate.

¹ FCC 96-59 (released Feb. 14, 1996); 61 Fed. Reg. 6607 (Feb. 21, 1996).

I. INTRODUCTION

CWI is a domestic and international common carrier which provides a wide range of switched and private line services. CWI is the largest nationwide provider of interexchange telephone service serving exclusively business subscribers. CWI must purchase access and other services from the BOCs in order to serve these telephone subscribers. Indeed, approximately 40-45 percent of CWI's costs are paid to the BOCs in the form of access charges. Now, CWI will face competition from these same companies. While CWI welcomes the BOCs as potential competitors, the Commission must ensure that adequate safeguards are in place to protect the BOCs monopoly ratepayers from subsidizing competitive ventures such as out-of-region interexchange service.

II. OUT-OF-REGION INTEREXCHANGE SERVICE MUST BE PROVIDED BY A TRULY SEPARATE SUBSIDIARY

The Commission's NPRM proposes to regulate BOC entry into out-of-region interexchange services as non-dominant if it is through an affiliate that satisfies the separation requirements established in the Competitive Carrier proceeding. Pursuant to that proceeding, non-dominant regulation requires the affiliate to maintain separate books of account, not jointly own transmission or switching facilities with the BOC, and purchase any exchange company services at tariffed rates and conditions.²

CWI believes that these safeguards are woefully inadequate to ensure nondiscriminatory BOC entry into out-of-region interexchange services and supports

² NPRM at Par. 4.

the adoption of safeguards which would physically separate BOC local exchange operations from its provision of out-of-region interexchange service. In short, what is truly needed is a totally separate entity which can enter the interexchange marketplace standing on its own. To effectuate this goal, the Commission must ensure that there are: 1) separate employees, officers and directors, including no reliance on BOC marketing or sales personnel to sell out-of-region services; 2) all services must be obtained from the BOC on a non-discriminatory basis including the use of customer or other competitively valuable information gained through the provision of local exchange service; and 3) no sharing of equipment or facilities.

a. Separate Employees

As stated above, CWI believes that the actual provision of out-of-region service by a BOC must be physically and administratively separate from its provision of local exchange service. Not only should the affiliate maintain separate corporate books, any new BOC affiliate should be a wholly separate subsidiary. This means that the new subsidiary should have its own employees, officers and directors. The sharing of employees would present simply too great a risk for anticompetitive behavior and would be unfair both to the BOC, and to its competitors.

With regard to separate employees, however, it is crucial that the Commission prohibit the BOC from combining local and out-of-region marketing and sales activities. For example, a BOC should not be permitted to market out-of-region services such as travel and prepaid calling cards to its local customers using its imbedded local service marketing and sales agents. Nor should a BOC's local sales

representative market its out-of-region services to business customers with multiple locations. Permitting such joint marketing unfairly burdens local ratepayers -- who shoulder the costs of these marketing activities -- and gives the BOC an unfair competitive advantage. At a minimum, even if the Commission finds that the two BOC entities may share certain employees, all sales and marketing functions should be conducted by separate personnel.

b. Separate Operations

Like other IXC's, the affiliate will need to purchase information, access and operating systems from the BOC. The Commission must ensure that any service obtained by the separate affiliate from the local monopoly BOC is provided to all other interexchange carriers on a non-discriminatory basis. For tariffed services, this means that the separate affiliate must obtain access, transport, and all other Title II services on the same terms and conditions available to other similarly-situated carriers. Importantly, this should include access to LEC databases such as calling card validation and BNA information.

For non-Title II services such as billing and collection or access to local exchange customer information, the BOC must make any information given to its affiliate available on the same terms and conditions, including price, to other interexchange carriers. There is no question that the BOCs obtain unique information by virtue of their position as the monopoly provider of local exchange service. The Commission must ensure that this information is not misused by the BOC to give its affiliate an unfair competitive advantage in the interexchange marketplace.

c. Separate Equipment and Facilities

Should the affiliate be able to share equipment and facilities with the BOC's local exchange operations, the BOC might be able to shift costs from its provision of interexchange service to its local exchange ratebase. Such a shift would have a detrimental effect on local ratepayers, who have already borne most of the costs of this equipment. Moreover, such a shift would allow the affiliate to engage in anticompetitive conduct by pricing its services below true costs. The Commission should not allow any subsidization of the affiliate's network costs by sharing facilities with the BOC.

III. CONCLUSION

CWI agrees with the Commission's general conclusion that the BOCs should be regulated as nondominant for the provision of out-of-region interLATA services, but only if the BOC is willing to set up a truly separate subsidiary. At a minimum, CWI believes that a separate subsidiary must contain the safeguards discussed in this petition to ensure that the BOCs do not unfairly leverage their market power in the local exchange region to gain an unfair advantage in out-of-region services.

Respectfully submitted,

CABLE & WIRELESS, INC.

By: 

Rachel J. Rothstein

Senior Regulatory Counsel

CABLE & WIRELESS, INC.

8219 Leesburg Pike

Vienna, VA 22182


(703)734-4439

CERTIFICATE OF SERVICE

I, Gail E. Cariota, do hereby certify that a copy of the foregoing Comments of Cable & Wireless, Inc. (CWI) was delivered via courier, this thirteenth day of March, to the following:

Janice Myles
Common Carrier Bureau
1919 M Street, NW
Room 544
Washington, DC 20554

ITS
2100 M Street, NW
Room 140
Washington, DC 20037



Gail E. Cariota

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